

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling

BRANDON MARQUIS JENNINGS,

Petitioner,

v.

CIVIL ACTION NO. 5:21-CV-14
Judge Bailey

CASE MANAGER YONASH,
P. ADAMS, P. McKONE,
F-2 COUNSELOR JORGE,

Respondents.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James P. Mazzone [Doc. 6]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on February 2, 2021, wherein he recommends that petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] be denied and dismissed without prejudice to the petitioner's right to file a civil rights action.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v.*

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of service, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.

Also pending before this Court is petitioner's Motion for Voluntarily Dismissal and Motion to Strike and Seal [Doc. 9], filed February 11, 2021. Therein, petitioner moves to voluntarily dismiss the petition. Further, he asks that the name David Gambino, included in the R&R as an apparent typographical error, be struck and that the case be sealed. The Court has reviewed the R&R and the Motion and finds no reason to seal the case or to allow voluntary dismissal after an R&R has been submitted. Accordingly, the Motion [Doc. 9] is **DENIED**. Insofar as the motion raises an objection to the typo in the R&R, that objection is overruled, as the Court finds that the error did not impact the magistrate judge's reasoning in the R&R.

Upon careful review of the above, it is the opinion of this Court that the Report and Recommendation [Doc. 6] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, petitioner's Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Doc. 1] is hereby **DENIED** and **DISMISSED WITHOUT PREJUDICE** as to petitioner's right to file a civil rights action. Further, the Motion for Leave to Proceed in forma pauperis [Doc. 2] is hereby **DENIED** and the fee waived. This Court further **ORDERS** that this matter be **STRICKEN** from the active docket of this Court and **DIRECTS** the Clerk to enter judgment in favor of respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to mail a copy to the *pro se* petitioner.

DATED: February 23, 2021.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE